

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**OCTAVIA JEROME THOMAS,**

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**CASE NUMBER 6:01-CR-00032-JDK-JDL**

**REPORT & RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On September 21, 2020, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Octavia Jerome Thomas. The government was represented by Ryan Locker, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Matthew Millslagle, Federal Public Defender.

Defendant originally pled guilty to the offense of Possession With Intent to Distribute and Distribution of Cocaine Base, a Class B felony. This offense carried a statutory maximum imprisonment term of 40 years. The United States Sentencing Guideline, range based on total offense level of 29 and criminal history category of I, was 87 to 108 months. On February 28, 2002, District Judge John Hannah sentenced Defendant to 93 months imprisonment followed by 5 years of supervised release, subject to the standard conditions of release, plus special conditions to include financial disclosure and drug testing and treatment. In April 2015, a transfer of jurisdiction was conducted to the Northern District of Texas-San Angelo Division. On October 22, 2015, Defendant's term of supervised release was revoked, and he was sentenced to 24 months imprisonment to run consecutive to the sentence imposed in Case No. A-15-0328-SA, 51<sup>st</sup> District Court, Tom Green County, Texas. This was to be followed by a 2-year term of supervised release

subject to the standard conditions of release, plus special conditions to include participation for treatment of narcotic, drugs, or alcohol dependency; and to abstain from the use of alcohol. On June 2, 2017, Defendant completed his period of imprisonment and began his term of supervised release in the Eastern District of Texas. On January 14, 2019, a transfer of jurisdiction was conducted to the Eastern District of Texas-Tyler Division.

Under the terms of supervised release, Defendant was required to refrain from any unlawful use of a controlled substance. In Allegation 4 of its petition, the government alleges that Defendant violated his conditions of supervised release by possessing cocaine on or about November 7, 2018, and possessing cocaine, amphetamines, and methamphetamines on or about February 13, 2019, based on lab results. The government represents that Fifth Circuit case law permits a court to find that illicit drug use constitutes possession for the offense.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by cocaine, amphetamines, and methamphetamines, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon finding of a Grade B violation, the Court shall revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of I, the Guideline imprisonment range for a Grade B violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts as alleged in Allegation 4 of the government's petition. In exchange, the government agreed to recommend to the Court a sentence of time served due to time Defendant has spent in jail on state charges with no supervised release to follow.

The Court therefore **RECOMMENDS** that Defendant Octavia Jerome Thomas' plea of true be accepted and he be sentenced to time served with no supervised release to follow. The parties waived their right to objections so this matter shall be immediately presented to the District Judge for consideration.

**So ORDERED and SIGNED this 21st day of September, 2020.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE